IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 376 of 1990

Date of Decision: 15.12.2005

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VINODBHAI GOPALBHAI PATEL & 2 - Appellant(s)
Versus
BHARATBHAI MAGANBHAI PATEL & 1 - Respondent(s)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting? Yes

For the Appellant(s):
MR RAJNI H MEHTA for Appellant(s): 1, Adv.

For the Respondent(s):
MR SUNIL B PARIKH for Respondent-2, Adv.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal arises out of judgment dated 31.12.1988 passed by Motor Accident Claims Tribunal (Aux.), Surat, MACP No.546 of 1984.

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Whether reporters of Local Papers may be allowed to see the Judgment? Yes

2. Claimant (27) was returning from Bardoli on his motorcycle GTN-5498. When he reached near Bamroli village turn, truck No.GTT-5425 came from opposite direction driven at an excessive speed. Driver of truck lost control, went on wrong side and hit the claimant. As a result, claimant was thrown off towards west and sustained injury on the head. He became unconscious and motorcycle badly damaged. Truck driver left the place, claimant shifted to Sardar Smarak Hospital at Bardoli. Neuro Surgeon performed brain operation opening the skull bone which was broken into pieces. Doctor could see that the brain was injured and some part of it was found paralytic. This portion was removed. The left hand is affected by paralysis because of brain injury. He remained in the hospital for 50 to 60 days. He regained consciousness after 15 to 20 days'

admission in the hospital. For better treatment, he was shifted to Ashaktashram Hospital at Surat where necessary treatment was given but no improvement could be noticed, therefore, removed to Shanta Neuro Surgical Unit at Vadodara where Dr.C.D.Patel treated him but no improvement was there. However, he was advised physiotherapy and other treatment. He will remain bedridden for whole of his life, unable to walk of his own accord, unable to take care of himself, unable to attend agriculture work, no longer can undertake the work of diamond cutting, therefore, claim of Rs.3,50,000/- is preferred against the opponents alleging rash and negligent driving of the truck.

3. Opponents-1 & 2 filed written statements and denied allegations. Insurance Company also denies allegations. Further, it states that

claimant could not negotiate the turn correctly, therefore accident took place. Opponent-1 did not posses valid driving licence to drive the truck. In the alternative, accident was result of contributory negligence on the part of claimant.

4. On the pleadings of parties, Claims Tribunal framed issues, recorded evidence and found that accident was caused by truck driver and not by the claimant. Therefore, compensation of Rs.3,09,700/- is awarded with interest at the rate of 12% from the date of application till payment with proportionate costs.

5. This Award is challenged on two counts, namely, liability for the accident and assessment of compensation. On the first

point, it is contended that as per the Panchnama, truck was going on the correct side of the road, therefore, finding of the Claims Tribunal holding driver of the truck responsible is not sustainable. We do not find favour with this submission. Witnesses – Navinbhai and Maganbhai say that truck was being driven at an excessive speed ignoring the curve on the road. They also say that driver did not follow rules of traffic and turning the vehicle properly on the correct side and direction of the road. With this nature of eye-witnesses' account, much reliance cannot be placed on the panchnama. Finding on this question is based on evidence and unless perverse, the Appellate Court should not disturb the same. We find no perversity in the assessment of evidence on this aspect. Further, the driver was prosecuted and found guilty. The claimant did

not contribute to the accident, therefore, finding based on evidence, is confirmed, contention rejected.

6. With regard to assessment of compensation, we may quote paragraph 13 of Award which deals with the nature of injuries suffered by the claimant:

> *"13. When the applicant has sustained serious injury making him a dead wood for the whole of the life, he is entitled to reasonable amount of compensation under the different heads which I would be dealing them in seriatim. Looking to the above stated injuries, the applicant must have undergone severe pain and shock not for a day or two but for the whole of the period of treatment and the same still continue. Dr.Pethe has assessed his disability. The applicant has been now placed into miserable and helpless condition, which would last for the whole of the life. He is not in a position to speak and will not be able*

to speak correctly. No doubt, he follows the question put to him but he is not in a position to reply even by conjectures because his whole of the left side is paralyzed. His right leg was paralyzed when he was a child. At present, his right hand is not now in a position to function because of the injury. Its grip has gone. He is not able to hold pen or pencil and write. He is not able to do any work with the aid of hand or foot. He will not be able to do any job or work. For the whole of the life, he will have to remain bed-ridden and dependent o others. It is also made clear by Dr.Desai that he will not be able to enjoy his marital life now, and such disabilities which can be assessed 100 per cent would remain for ever despite best treatment given or if given in future. It seems that the injuries are of such a nature that at present the medical science is also helpless to help the applicant and the applicant will have to life a life like a dead wood. This precarious situation o which the applicant is put to will

cause anxiety, miseries, worries and tension not for certain time, but for whole of the life and would affect the psychology of the applicant. Physically and mentally he would be broken down. He would always think that the life is not worth living. His memory is considerably impaired. When such is the precarious condition of the applicant, under the head `pain, shock and suffering', higher amount than conventional one should be awarded, and that should be Rs.25,000”

From perusal of facts recorded in above quoted paragraph, physical condition of the claimant appears to be quite serious, thoroughly dependent on others for rest of his life, therefore, rightly said by the Claims Tribunal that he is a “dead wood” for whole life.

7. Question therefore arises whether, in the circumstances, court can enhance the

compensation? It can do so under Order 4, Rule 33, Civil Procedure Code, read with Section 168, Motor Vehicles Act, 1988, which requires Court to determine amount of compensation which appears to it to be just. [See: New India Assurance Co. Ltd. v. Charlie & Anr. - (2005(3) Supreme 262), Prakramchand v. Chuttan and others (AIR 1991 Madhya Pradesh 280), Oriental Fire and General Insurance Co. Ltd. v. Amarsing Pratapsing Sikliker and others (1994 ACJ 240), Andhra Pradesh State Road Transport Corporation v. Patan Shamshad Begum and others (2001 ACJ 1399), Kishan Lal v. Mehndi Hasan and another (2001 ACJ 33), and Chairman, Tamil Nadu Electricity Board and another v. Parvathi Ammal and others (2005 ACJ 1156)].

8. Therefore, appropriate enhancement is called for under certain heads to the extent

of Rs.50,000/- (pain, shock and suffering), Rs.5,000/- (attendant charges), Rs.5,000/- (transportation charges), and Rs.30,300/- (loss of future prospects and future medical expenses). Accordingly, Appeal is dismissed, Award is modified to the extent that against the Award of Rs.3,09,700/-, claimant shall be entitled to compensation of Rs.4,00,000/- with interest at the rate of 9% on the enhanced compensation from the date of application till payment. The Award amount shall be deposited with the Claims Tribunal within two months, which shall invest it in F.D.R. with a Nationalized Bank in the name of Bharatbhai Maganbhai Patel (claimant), for a period of ten years in the first instance, extendable from time to time. Interest accruing on the F.D.R. shall be paid to the claimant monthly or quarterly or six monthly, as may be demanded by him from the Manager of the Bank.

Cost on parties.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)